IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1563 OF 2007
IN
SUIT NO.220 OF 2006

Hatim Rasulbhai Chitalwala & Ors. ..Plaintiffs.

V/s.

Saifuddin Badruddin Chitalwala & Ors. ..Defendants.

Mr.Ashish Kamath i/b. M/s. Apex Law Partners for plaintiffs.

Mr.Simil Purohit i/b. M/s. Lokhandwala & Co. for defendant Nos. 7 to 12.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 25, 2007.

P.C. :

1. Heard counsel for the parties. For the nature of order that I propose to pass, counsel for the plaintiffs has not insisted for filing reply affidavit to the present motion. The plaintiffs proceed on denial.

2. Indeed, this Court by order dated 13th February, 2007 in Notice Motion No. 390 of 2007 has appointed Court Receiver to take over possession of Flat No.4 for the reasons recorded in the said order. However, the question is whether the defendant No.10 who is presently in occupation of Flat No.4 can be

permitted to occupy the same for some more time, so as to enable him to carry out necessary repairs in Flat No.2 within such time. The defendant No.10 prays that six weeks time be granted to the defendant No.10 for this purpose.

3. Although the plaintiffs have opposed this request in the interest of justice, I am inclined to permit the defendant No.10 to occupy Flat No.4 for a period of six weeks from today on oral undertaking given by defendant No.10 through counsel before this Court today that the said defendant will hand over vacant and peaceful possession of the Flat No.4 to the Court Receiver on or before 7th June, 2007. The defendant No.10 also undertakes through counsel to pay compensation for user of flat No.4 for the period of six weeks from today. The amount of compensation will be proportionate to the amount of royalty, to be fixed by the Court Receiver for appointment of any person as agent of Court Receiver to occupy flat No.4, after the same is vacated by the defendant No.10. Counsel for the defendant No.10 on instruction states that the defendant No.10 will abide by this condition as well.

4. Next question is whether the defendant No.10

can be permitted to participate in the offer to be made to the Court Receiver for being appointed as an agent of the Court Receiver in respect of Flat No.4 at the later point of time. Counsel for the plaintiffs submits that having regard to the adverse finding recorded by this Court against the defendant No.10, which necessitated this Court to appoint Court Receiver at the instance of the plaintiffs, the defendant No.10 is disentitled from applying for being appointed as an agent of the Court Receiver. This submission does not commend to me. This is so because, by the same order dated 13th February, 2007, this Court while appointing Court Receiver at the instance of plaintiffs in respect of the flat No.4 in paragraph-4 has also granted liberty to the defendant No.10 to apply to the Court Receiver for being appointed as agent of the Court Receiver.

5. The next apprehension of the plaintiff that the Court Receiver will consider only defendant No.10, to be appointed as an agent of the Court Receiver in relation to the Flat no.4, in my view is misplaced. No such order is passed by this Court. It will be open to all the parties to the suit to apply to the Court Receiver for being appointed as an agent of the Court Receiver. The Court Receiver will

appoint the person as an agent, who will offer highest bid on such other terms and conditions, as may be advised. Those questions are left open.

6. Needless to clarify that the purpose of indulgence shown to the defendant No.10 allowing him to continue to occupy flat No.4 is only to facilitate the said defendant to repair flat No.2, so that he can latter on shift in the said flat within the specified time. It is also made clear that it will not be open to the defendant no.10 to apply for extension of time for any reason, whatsoever, including the ground that repair work of flat No.2 is still incomplete.

7. Accordingly, this Notice of Motion is disposed of on accepting the undertaking given by the defendant No.10 on the above terms.